IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28/03/2003

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION No.40573 OF 2002
WPMP.NO.60178 OF 2002
AND
WVMP.NO.495 OF 2003

Masseys,
No.17, North Railway Terminus Road,
Royapuram,
Chennai 600 013.
Rep. by its Partner .. Petitioner

-Vs-

1. The Corporation of Chennai,
rep. by the Commissioner,
Rippon Building,
Chennai 600 003.

2. The Zonal Officer,
Division No.22,
Zone-II,
Corporation of Chennai,
47, Basin Bridge Road,
Chennai 79. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein

For Petitioner : Mr.Vijay Narayan

For Respondents : Mr.P. Sundaram

:J U D G M E N T

Though the matter was listed for considering the petition filed by the respondents to vacate the interim order, since the same question was involved, on consent of the counsels appearing for the parties, the writ petition itself was heard on merit and is being disposed of by the present judgment.

2. The petitioner has prayed for issuing a Writ of Mandamus forbearing the respondents from constructing a lavatory block on the footpath, adjacent to the entrance at No.17, North Railway Terminus Road, Royapuram.

The petitioner is an Engineering Company engaged in the manufacture of granite products and has established warehousing, clearing and forwarding services. It is stated that in the first week of October, 2002, the petitioner found that adjacent to the compound wall, just at the entrance to the complex, the respondents were constructing Public Lavatories. The petitioner filed a representation to the respondents on 12.10.2002 stating that public lavatory should not be constructed at the said place. It was alleged that large number of lorries and trailers carrying heavy cargo move in and out every month. It was further alleged that about 200 workers were working inside the campus and construction of a public lavatory would be a major health hazard because of water stagnation, mosquitoes, flies and the diseases usually associated with such pests. It is further stated that even though a representation was made, no reply has been received. Therefore, a writ of Mandamus or appropriate writ should be issued forbearing the respondents from constructing public lavatory at the said place.

3. The main contention raised by the learned counsel appearing for the petitioner is to the effect that the Corporation has no right to construct lavatories on the footpath and such construction is not permissible under the law.

4. In the counter affidavit filed on behalf of the respondents it has been stated:

" 3. The public convenience under construction is for the economically weaker section at Chettithottam. The Public Convenience construction is nearer to the Bus Shelter, Royapuram Railway Station and also useful for the thousands of road users of that area including vehicle riders. There is no lavatory block in the near vicinity. This construction is away from the entrance of the petitioner's Company entrance and situated at a distance at 8.50 Metres. also there is 5.70 Metres width from the road margin."

It has been further stated:

" 4. . . . Because the location in which the construction is carried out is used as an unauthorised parking lot for the Trailers and Lorries of the Petitioner's company. He has no right to do so. He wants to prevent the construction under the strength of the orders of this Hon'ble Court. There is no health hazard or danger in constructing the lavatory block either to the public or to the petitioner. In fact, the same would improve the social condition of the nearby economically weaker sections."

5. Learned counsel appearing for the petitioner by relying upon the decision reported in A.I.R. 1985 Madras 23 (M.A. PAL MOHAMMED AND OTHERS v. R.K. SADARANGANI AND OTHERS) has contended that members of the public, including the petitioner, have right to use the footpath and such right should not be hampered by constructing lavatories.

6. A careful perusal of the decision makes it clear that the decision instead of supporting the contention raised by the petitioner, rather indicates that there is no absolute embargo on the Corporation to construct

public convenience on the roadside.

In paragraph 17, it is further observed :

 17. It is interesting to note that in Halsbury s Laws of England, Fourth Edition, Volume 21, at page 700, by reference to S.5(2) of Highways Act, it is stated that the concerned Council can provide in any street in its area, on land abutting such streets, advertisement units, showcases, information boards and other similar structures, and may let out any such structure on such terms and conditions as it deems fit. . . .

It is further observed in paragraph 21:

 21. The other point taken is that, a member of the public has the right to pass and repass over every inch of the street. This concept is subject to several restrictions that could be imposed. The definition of public street embraces within its fold not merely a footway but a roadway; the drains; that portion of the and which is either covered or not covered by pavement; veranda or other structures; and a riding path etc., If the common law principle of right over every inch of a public street is accepted and implemented, in respect of a public street as defined under S.2(20), a member of the public would claim that he has a right to walk in the roadway or over a flower bed or other structures erected by public authorities for regulating traffic in a public street. How is this concept of right over every inch is to be understood and enforced? In a public street, for the absolute needs of public, authorities are duty bound to locate post boxes, fire hydrants with water tanks, milk booths, bus or jutka or cycle stands, rubbish bins and telephone booths, etc. etc. Areas covered by these public facilities form part of the public street. Hence subject to restrictions contemplated regarding user of these facilities, no member of the general public could claim that he has the right to trade upon every inch of them. Apart from that, for public benefit, electricity fuse boxes are located, car parks, taxi or cycle stands are provided, in public streets. Here again, the right over each inch of them, would be subject to certain restrictions. Apart from them, public conveniences, advertisement hoardings are also erected. Traffic roundabouts, display boards, are required for regulating vehicular traffic, and therefore, as to in what manner a public street could be enjoyed by general public and which portions of it are to be earmarked for which manner of use, are administrative decisions. It would be preposterous to hold that the public have a right of movement over every inch of a public street, once formed, and that no restriction could be imposed, confining their rights to pass and repass, only along specified earmarked portions. . . . (Emphasis added)

7. If the aforesaid observations are applied to the present case, it seems that there is no justification in the contentions raised by the petitioner.

8. In the counter affidavit it has been specifically indicated that lavatories are being constructed at a place which is more than

metres away from the entrance gate of the petitioner. It has been further indicated that between the tar portion of the road and the place where lavatories are constructed, sufficient space is available, and therefore, the right of the public in utilising the pathway would not be hampered.

9. In course of hearing, the learned counsel for the petitioner has submitted that within 40 metres, lavatories have already been constructed and there is no

necessity to construct these lavatories at the present place. The question regarding suitability of the place for construction of lavatories is a matter within the discretion of the Corporation authorities and it cannot be said that such discretion has been arbitrarily exercised.

10. Learned counsel for the petitioner has also contended that since many lorries would be coming to the premises of the petitioner, possibility of accident occurring, particularly in respect of children, looms large. This apprehension appears to be farfetched.

11. Learned counsel for the petitioner has also contended that construction of lavatory would also create health hazard for the workers and other members of the public. There is no doubt that when the lavatories are constructed by the Corporation, it would maintain such lavatories properly so as not to cause any health hazard to the residents of the locality and all proper precautions would be taken.

12. For the aforesaid reasons, I do not find any merit in this writ petition, which is accordingly dismissed. The interim order stands dissolved. No costs. Consequently, miscellaneous petitions are closed.

Index : Yes
Internet : Yes

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